

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

X

CLAIRE LEBOWITZ and KEEGAN STEPHAN.,

Plaintiffs,

-against-

CITY OF NEW YORK, POLICE OFFICER ADRIANNE
EDWARDS, Shield 611, NYPD OFFICER DOEs 1-10,

Defendants.

**DECLARATION OF
ANDREW LUCAS IN
SUPPORT OF
DEFENDANT'S MOTION
FOR SUMMARY
JUDGMENT**

12 CV 8982 (JSR)

X

ANDREW LUCAS, declares under penalty of perjury and pursuant to 28 U.S.C. § 1746, that the following is true and correct:

1. I am a Assistant Corporation Counsel in the Office of Michael A. Cardozo, Corporation Counsel of the City of New York, attorney for defendants. As such, I am familiar with the facts stated below. I submit this declaration in support of defendants' motion for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure.
2. Attached as Exhibit A is a copy of plaintiffs' first amended complaint. Plaintiffs filed the instant action on December 11, 2012. Plaintiffs subsequently filed their first amended complaint on March 1, 2013. Plaintiffs bring four claims against the City of New York and Officer Adrienne Edwards, violations of plaintiffs' First and Fourth Amendment rights stemming from their arrest at Zuccotti Park, violations of plaintiffs' Sixth Amendment rights stemming from their names being misspelled on arrest paperwork, violations of plaintiff Lebowitz's Fourteenth amendment rights stemming from her alleged prolonged incarceration

for refusing the iris scan, and a municipal liability claim predicated on Monell v. Department of Social Services of the City of New York, 436 U.S. 658 (1978).

3. Attached as Exhibit B is a copy of plaintiff Keegan Stephan's deposition transcript, taken on May 30, 2013.

4. Attached as Exhibit C is a copy of plaintiff Claire Lebowitz's deposition transcript, taken on June 3, 2013.

5. Attached as Exhibit D is a copy of plaintiffs' responses to notices to admit, dated June 12, 2013. Therein, plaintiffs admit that the rules posted in Zuccotti Park on January 11, 2012 stated in part: "The following types of behavior are prohibited in Zuccotti Park... Lying down on the ground, or lying down on benches sitting areas or walkways which unreasonably interferes with the use of benches, sitting areas or walkways by others." They further admit Joseph Bassolino was arrested and convicted of trespass after lying down in Zuccotti Park that same night. The further admit that Zuccotti Park, as described in People v. Nunez, 943 N.Y.S.2d 857, (N.Y. Crim. Ct. 2012) is a privately owned public space maintained by Brookfield Properties.

6. Attached as Exhibit E is a copy of the affidavit of Sergeant Joseph Imperatrice dated June 25, 2013. Sgt. Imperatrice witnessed, *inter alia*, plaintiffs defying the order of MSA Security Guard Robert Galvin, on behalf of Brookfield Properties, to leave the park, by refusing to do so. He subsequently warned the plaintiffs they must leave prior to them being placed under arrest.

7. Attached as Exhibit F is a copy of the affidavit of Police Officer Jason Rubenstein. Officer Rubenstein witnessed, *inter alia*, the events leading to plaintiffs' arrests, when they

refused to exit the park, the plaintiffs going limp when they arrived at the police van, and the events leading to the arrest of Joseph Bassolino on January 11, 2012.

8. Attached as Exhibit G is a copy of the affidavit of MSA Security Guard Robert Galvin, dated June 27, 2013, as well as plaintiffs' criminal court complaint and supporting deposition, attached therein as Exhibit I. Security Guard Galvin issued the warnings to plaintiffs and ultimately their order to leave the park on behalf of Brookfield Properties. Additionally, he provided a supporting deposition to aid in the prosecution of plaintiffs which is attached herein.

9. Attached as Exhibit H is a copy of the affidavit of Lieutenant Christopher Czark, dated June 27, 2013, as well as plaintiffs' On-Line Prisoner Arraignment forms or "OLPA" forms, the L-1 Identity Solutions Iris Recognition Frequently Asked Questions, and the New York City Police Department, and the Criminal Justice Bureau Iris Enrollment and Verification manual, attached therein as Exhibit 1-4.

10. Attached as Exhibit I is a copy of the affidavit of Program Manager Nick Puccio, dated June 28, 2013, as well as the L-1 Identity Solutions Iris Recognition Frequently Asked Questions, and the New York City Police Department, and the Criminal Justice Bureau Iris Enrollment and Verification manual, attached therein as Exhibit 1-2.

11. Attached as Exhibit J is a copy of plaintiffs' January 11, 2012 and January 12, 2012 arraignment transcripts. These demonstrate unequivocally that plaintiffs' appeared for arraignment alongside counsel.

12. Attached as Exhibit K is a transcript of the closing statements and the Judge's decision in the People v. Bassolino on May 31, 2012, docket 2012 NY 012974 before the Honorable Robert Mandelbaum.

13. Attached as Exhibit L is a copy of the video taken by Barbara Ross, non-party who was present and recorded some of the events surrounding the incident, including immediately after plaintiffs' arrest and plaintiffs refusing to enter the police van by going limp on clip #371 at 2:36.

14. Attached as Exhibit M is a copy of video taken by New York City Police Department Detective Lombardi who was present and recorded some of the events surrounding the incident, including plaintiff Stephan inquiring about park rules to security personnel and police officers prior to his arrest at 5:15.

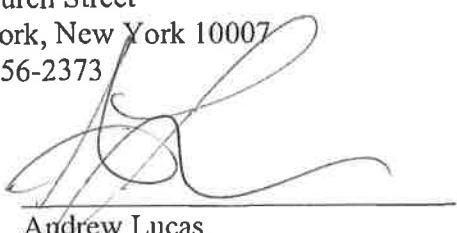
15. Attached as Exhibit N is a copy of select posts from plaintiff's twitter feed where prior to his arrest he stated, *inter alia*, "we are retaking the park now [] Everyone lie down at exactly midnight."

16. Attached as Exhibit O is a certified copy of the Manhattan Central Booking prisoner Log. This shows the time that plaintiffs were brought into Central Booking, the times they were removed for arraignment, and the same information for individuals arrested at approximately the same time. Please note this document has been filed under seal as it contains confidential non-party arrest information.

Dated: New York, New York
June 28, 2013

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